THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.27986 of 2005

Between:

Sabavat Rukman Naik, S/o.Gannia Naik

..... PETITIONER

AND

The Municipal Corporation of Hyderabad

represented by its Commissioner

And others

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.27986 of 2005

ORDER:

The petitioner is allegedly owner of plot No.77/19 admeasuring 729 Sq.yards in Yamuna Nagar Cooperative Housing Society. The land is allegedly comprised in survey No.102/3 of Hakimpet Village, Shaikpet Mandal, Road No.12, Banjara Hills, Hyderabad, and was allegedly gifted to him by Sri Syed Ahmed Nooruddin. The sixth respondent is also claiming the land. He and respondent Nos.6 and 7, who entered into development agreement with respondent No.8, were granted building permission by respondent Nos.1 and 2. It is further alleged that the respondent Nos.6 to 8 herein by reason of the said permit constructed building in survey No.102/3 instead of 102/1 for which they obtained permit to make construction in plot No.309. The petitioner made futile efforts to stop the construction by filing writ petition before this Court. On a complaint given by him, the respondent No1 informed that there are no deviations in the construction being made by respondent Nos.6 to 8. The petitioner made vain attempts to prevent eighth respondent from selling the flats. However, the first respondent issued a public notice dated 11.7.2005 in Newspapers cautioning the general public not to purchase any flats constructed by respondent Nos.6 and 7 at plot No.309 situated at Sri Venkateswara Cooperative House Building Society (MLA Colony), Road No.12, Banjara Hills,

Hyderabad vide permit No.27/86 dated 26.11.2002.

The petitioner herein addressed a letter to third respondent on 16.11.2005 requesting to disconnect power supply to the apartments block constructed by eighth respondent. He also gave similar representation to fifth respondent to disconnect water supply while requesting the first respondent to prevent respondent Nos.3 and 5 from continuing water and electric supply to the purchasers of the apartments constructed by the eighth respondent pursuant to permit No.27/86. Therefore, the petitioner filed the present writ petition seeking a writ of Mandamus directing the respondent Nos.1 to 5 to disconnect electricity/ water supply/drainage to plot No.309 of Sri Venkateswara Cooperative Housing Society (MLA Colony), Road No.12, Banjara Hills, Shaikpet Mandal, Hyderabad and for a declaration that the action of the respondent Nos.1 and 2 in allowing illegal construction in survey No.102/3 instead of survey No.102/1 of Hakeempet Village, Shaikpet Mandal, Hyderabad as illegal and arbitrary.

Learned Counsel for the petitioner strenuously contends that the first respondent colluded with respondent Nos.6 to 8 in allowing the latter to construct the residential apartments block in the property not belonging to the sixth respondent. Secondly, he would urge that knowing fully well that there is title dispute, the first respondent issued Occupancy Certificate under Section 455 of Hyderabad Municipal Corporations Act, 1955 (HMC Act) to eighth respondent enabling them to obtain electricity supply and water supply, which has caused great prejudice and loss to the petitioner.

A reading of the affidavit filed by the petitioner accompanying the writ petition would show that the petitioner earlier filed W.P.No.20276 of 2003 and W.P.No.5331 of 2004. It is also brought to the notice of this Court that he also filed W.P.No.20508 of 2005. In all these cases, he raised the dispute of title that allegedly exists between the petitioner on one hand and the sixth respondent on the other hand regarding the identity of the land and localization thereof. It also becomes clear that a suit being O.S.No.5261 of 2003 was filed by respondents 6 to 8 on the file of the Court of IV Junior Civil Judge, City Civil Court, Hyderabad and a land grabbing case being L.G.C.No.56 of 2002 was filed by the petitioner under the provisions of A.P.Land Grabbing (Prohibition) Act, 1982 (LG Act, for brevity). Insofar as the earlier writ petitions are concerned, they were either dismissed or disposed of and the matter in the Special Court under LG Act and suit filed by the respondent Nos.6 to 8 are still pending. At no point of time, the petitioner made any attempt to obtain appropriate injunction against respondent Nos.6 to 8 from proceeding with the construction on plot No.309 or 309/A, Sri Venkateswara Colony. Nonetheless, acting on the representations made by the petitioners, the first respondent issued a caution notice and published the same in Newspapers and admittedly even before such notice was issued, the eighth respondent sold away the plots. On an application made by the sixth respondent, water supply connection was given by the fifth respondent and electricity service connection was given by the third respondent by installing a separate transformer to the apartment block. In this writ petition, the petitioner seeks a direction to respondent Nos.1 to 5 to disconnect electricity/water supply to the apartment block constructed by the eighth respondent. The question is whether the

petitioner has such a right to enforce in this writ petition or whether there is a duty cast on respondent Nos.1, 3 and 5 to disconnect power supply when there is a title dispute between two persons.

A person who claims title to the land has a right to protect such title. If there is a trespasser on the land making attempts to raise constructions, the remedy in common law is to file a suit against such person and obtain order prohibiting changing land use. Insofar as the right of the trespasser to raise construction is concerned, he/she cannot raise any construction on the land unless a valid permission is obtained from the local authority like Municipal Corporation of Hyderabad (MCH). When there is a dispute as to the ownership or title to the land on which a construction is sought to be made, the local authority or MCH have no power to decide the question of title, though in case of title dispute, such local authority can advise the rivals to resolve the dispute in a civil court. In case where permission is already obtained, the jurisdiction of MCH is limited to prevent illegal or unauthorized construction or construction in deviation of the sanction plan. No such jurisdiction vests in MCH to advise or direct public utilities like third respondent or fifth respondent to stop supply of water/electricity. Indeed, as rightly pointed out by the learned Standing Counsel for MCH, there is no provision in HMC Act or MCH Building Byelaws, 1981, which confers such power on the MCH. Likewise, as rightly pointed out by the learned Standing Counsel for fifth respondent Hyderabad Metroplitan Water Supply & Sewerage Board Act, 1989 does not confer any power on the Board to disconnect water supply, which is already given to an occupant.

It is brought to the notice of this Court that on an application made by the respondents 6 to 8, the Superintending Engineer gave eight service connections on 14.7.2004 in the apartment block constructed by eighth respondent after duly installing a separate transformer. It is also brought to the notice of this Court by the learned Standing Counsel for fifth respondent that an application was made on 01.4.2005 and the water supply connection was given to the apartment on 06.6.2005. There is no power vested in these authorities to disconnect power supply on the ground that there is a title dispute between two persons. Admittedly, the MCH already issued a caution notice in Newspapers on 11.7.2005 and the owners purchased the flats only after publication of the caution notice.

The writ petition is misconceived and is accordingly dismissed. No costs.

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(V.V.S. RAO,J)

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